IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 15745 of 2003

Between:

1 Smt. Karanam Lakshmi, W/o lae Karanam Babji,
Mallam Village, Pithapuram Mandal, East Godavari District
2 Smt. K. Mangadevi w/o late Appanna dora
Mallam Village, Pithapuram Mandal, East Godavari District

..... PETITIONERS

AND

1 The District Collector, East Godavari District, Kakinada.
2 Revenue Divisional Officer, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue notice, call for records and quash the impugned notification dated 13-06-2003 made in Reverence G2/24/2/2003 of the District Collector East Godavari District Kakinada by issuing a Writ of Certiorari or any other appropriate Writ or Order or Direction as the Hon'ble Court deems fit and proper in the circumstances of the case and to allow the Writ Petition.

Counsel for the Petitioners: MR.V.V.N.NARAYANA RAO

Counsel for the Respondents : GP FOR LAND ACQUISITION

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15745 OF 2003

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ORDER:

First petitioner is the owner of agricultural land admeasuring Acs.2.89 in Survey No.188/1 and the second petitioner's husband is the owner of agricultural land admeasuring Acs.4.37 in Survey No.189/1. They challenge the notification issued by first respondent under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire an extent of Acs.0.08 belonging to first petitioner and Acs.0.17 belonging to second petitioner for the purpose providing a grave yard for scheduled castes. It is a case of the petitioners that there are more suitable lands belonging to big landlords in the village, but the respondents ignored those lands and proposes to acquire the petitioners' lands, which is illegal. They also contend that they are small farmers and their lands cannot be acquired and that enquiry under Section 5A of the Act was dispensed with in a routine manner without application of mind and therefore the same is unsustainable.

In the counter affidavit filed by the second respondent while denying the petition allegations, it is stated that the petitioners are not small farmers, that the first petitioner is engaged in the business of platter of leaves, that the land sought to be acquired is a wet land and therefore they cannot be treated as small farmers. It is also opposed on the ground that a minor portion of the petitioners' lands is being acquired so as to provide a burial ground for the persons belonging to scheduled castes near the existing burial ground in Acs.0.02 of land, which has become congested. There are 350 scheduled caste families in the village and having regard to the existing congested burial ground on the road margins, it is proposed to acquire the said lands. As there is an urgency, the provisions of Section 17(4) of the Act were invoked dispensing with the enquiry under Section 5A of the Act.

Learned counsel for the petitioner Sri V.V.N.Narayana Rao, while reiterating the contentions taken in the affidavit accompanying the writ petition, placed reliance on the judgment of the Supreme Court in **Union of India v Mukesh Hans** in support of the contention that the enquiry under Section 5A of the Act was dispensed with, deprive the petitioners making a representation, and that while exercising such power, the first respondent has not applied his mind properly. **Per contra,** these contentions are refuted by the learned Assistant Government Pleader for Land Acquisition.

The submission of the learned counsel for the petitioners that the petitioners are small farmers and therefore their lands cannot be acquired, is a submission without any substance. In the counter affidavit, the respondents have stated that the petitioners are owners of wetlands. This is not denied by the learned counsel for the petitioners by filing a reply affidavit. It is well settled that a person owning less than Acs.2.50 of wet land or less than Acs.5.00 of dry land is considered as small farmer, whereas in this case the petitioners own wet lands, which cannot be treated as small holding. Further it is well settled that the Government instructions not to acquire the lands belonging to small farmers as far as possible, is not an inflexible rule conferring any right on the owners to seek exclusion from the provisions of Land Acquisition Act. Secondly, the submission of the learned counsel for the petitioners that enquiry under Section 5A of the Act was dispensed with, is also without any substance. In support of this ground, it is stated in the affidavit accompanying the writ petition as under.

8. I submit that abutting the land proposed to be acquired, more suitable land in S.Nos.166; 176; 177/11; 177/15; 177/16 and 186/12 belonging to big landlords like Sri Kumpatla Paparao which is more than Acs.15.00 is available and the Respondents may think of alternative acquisition from big landlords leaving us – the small farmers.

9 . I submit that since respondents dispensed with the statutory enquiry contemplated under Section 5-A of the Land Acquisition Act, we could not represent the same before the authorities concerned. Though in the impugned notification Sc.5-A enquiry is dispensed with, they have not taken possession of the land in question. Even today we are in actual physical possession of the land.

In the opinion of this Court, the above pleadings are not sufficient to draw any initial inference that the first respondent dispensed with enquiry under Section 5A of the Act in a routine manner. There is not even an averment to the effect that all the necessary material was not placed before the competent authority. In **Union of India v Mukesh Hans** (supra) while reiterating the principle that the limited valuable right under Section 5A of the Act cannot be denied to a person in a routine manner, the Supreme Court also observed that in certain given circumstances, it would be appropriate for the Government to dispense with the enquiry under Section 5A of the Act on the very basis of acquisition. In paragraph 32 of the said judgment, the Supreme Court held as under.

A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen

emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. **It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated under Section 17(1) and (2) of the Act.**

(emphasis added)

In the present case, a representation was made to the first respondent on behalf of 350 families belonging to scheduled castes for additional area to be added to the existing burial ground, which is already congested. If immediately burial ground is not provided, there is likelihood of disposal of dead bodies in a hasty manner, which might result in health problems. Therefore, in the given situation, there is certainly an urgency in dispensing with the enquiry under Section 5A of the Act. If an enquiry is conducted and the matters take their own time, it might result in causing hardship and injury to the sentiments of the people belonging to the scheduled castes and as a measure of providing additional burial space in the interest of all the villagers, the first respondent was right in dispensing with enquiry under Section 5A of the Act. In the background of these facts, the decision cited by the learned counsel for the petitioners goes against the submission made by him. The learned counsel for the petitioners has not urged any other ground.

The writ petition is therefore dismissed without any order as to costs.

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(V.V.S.RAO,J)

08.11.2004.

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To

1. The District Collector, East Godavari at Kakinada.
2. The Revenue Divisional Officer, East Godavari at Kakinada.
3. 2 CCs to the G.P. for Land Acquisition, High Court Buildings, Hyderabad (OUT).
4. 2 CD copies.